IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Maharaj Himmat Singh and another
vs.
Union of India and others.

(S.B. CIVIL WRIT PETITION NO.1749/2001)

DATE OF ORDER ::: JULY 18, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. BC Mehta, for the petitioners.

Mr. LR Upadhyay, Dy.GA) for the respondents.
Mr. Rajesh Joshi)

BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

The present controversy has a chequered history as the controversy started when the Union of India issued a notification under Section 23(1) of the Defence and Internal Security of India Act, 1971 (for short “the Act of 1971”) for requisitioning a total land measuring 645 acres. Copy of the notification has been placed on record by the petitioners as Annex.11. The description of the property has been given in the notification which is as under :-

Name of Village	Khasra Number	Area in Acres	Remark
Jodhpur	298	7.20	State govt. Land
Jodhpur	297	13.60	area 21.00 acres
Jodhpur	426	296.20	Private Land area
Jodhpur	632		62.00 acres
Jodhpur	632/1	158.00	
Jodhpur	632/4		
Digeri		170.00	
TOTAL :		645.00	

It appears from the facts that so far as requisitioning the property by the Union of India under the Act of 1971 was never challenged by the petitioners and today also, there is no dispute about the requisitioning of the property by the Union of India mentioned in the notification dated 6.5.1976 (Annex.11). How much land was acquired by the said notification is also not in dispute. However, the petitioners apprehending that their land may be acquired by the State Government under the provisions under Sections 7A and 9A of the Rajasthan Land Reforms and Acquisition of Land Owner's Estates Act, 1963 (for short “the Act of 1963”), the petitioner preferred a writ petition before this Court being SBCWP No.2085/1975. The petitioner challenged the validity of Section 7A of the Act of 1963 and sought relief of declaring Section 7A of the Act as ultra vires of the Constitution and in the alternative prayed that if Section 7A is declared valid, then since the land in question is abadi land, as such the land cannot be acquired. The reply was filed by the

respondents – State and the District Collector, who were party in the writ petition.

According to learned counsel for the petitioner in the reply, the State did not challenge the petitioner's title over the property or khatedari right of the petitioner over the land in dispute. It is also submitted that the interim order to maintain status quo was passed by the Court in the petitioner's above writ petition on 23.12.1975. According to the petitioner, a bare look into plan attached to the sale deed dated 26.8.1974 would have made the position clear about the fact that the petitioner's land is covered under the land requisitioned under the Act of 1971 and in fact, on application of the petitioner dated 17.9.1976, a plan was prepared and it was submitted before the High Court in the above writ petition.

In the above writ petition, it was submitted on behalf of the State Government that the Government wants to file an affidavit to show that the Presidential order requisitioning the property under Section 23 of the Act of 1971 covers the property in dispute. This fact has been recorded by the Court in its order dated 15.11.1976 and in the same order, it also has been recorded that according to the State, Army authorities already took possession of the land in dispute and that fact has not been denied by the petitioner.

According to petitioners, in view of the above facts,

it is clear that the petitioners' title was never disputed nor it was ever disputed that land was requisitioned and in fact, it is admitted fact that after requisitioning the land under the provisions of the Act of 1971, possession of the petitioners' land was taken over by the Union of India.

Be it as it may be, because of the inclusion of Act No.11 of 1964 as amended by the Act No.15 of 1975 in the 9th Schedule to the Constitution of India, the validity of Section 7A remained no more available for challenge. On this ground, the writ petition became infructuous. However, the petitioner tried to submit that the land in dispute cannot be acquired under the Act of 1963 but the court held that no such ground has been taken in the writ petition and, therefore, the same cannot be allowed to be urged without any amendment of the writ petition. Hence, the writ petition was dismissed by the High Court vide order dated 14.8.1981. The petitioner challenged the above order of this Court dated 14.8.1981 by filing D.B. Civil Special Appeal No.246/1981. The Division Bench observed that the validity of Section 7A and Section 9A of the Act of 1963 has already been upheld by the Division Bench of this Court in the case of State of Rajasthan and ors. vs. Smt. Gayatri Devi reported in AIR 1980 (Raj.) 193 and so far as contention of the petitioner about his claim about compensation for the land in question, the Division Bench held as under :-

"However, it may be stated here that while

admitting the writ petition, an order was granted in favour of the petitioner on 23.12.1975 that status quo be maintained. That was an order which related to the acquisition of land under s.8 of the Act. Be that as it may, in the meanwhile, His Excellency the President of India was pleased to acquire this land for defence purposes and,therefore, this land was acquired under s.23(i) of the Defence and Internal Security of India Act,1971. The petitioner moved certain applications before the Collector for not acquiring his land but the Collector informed him vide Annexure-D dated 31.8.1976 that his land has already been acquired under the aforesaid Act of 1971 and therefore,if he wants to claim any compensation for the aforesaid acquisition of land,he should move an application under s.24 of the aforesaid Act of 1971. However,as these proceedings were pending,the petitioner moved an application for clarification of the stay order but this Court ordered that this clarification will be granted when the writ petition shall be heard on merits. The writ petition was ultimately dismissed on merits.

Be that as it may,we need not go into this question. This writ petition was filed for not acquiring this land under the provisions of the Act of 1964 but as the land has been acquired under the provisions of s.23(i) of the Act of 1971,no relief can be granted to the petitioner-appellant because such a relief has not been sought by him in his writ

petition. However,the petitioner has already been informed that if he wants to claim any compensation, he should move an application under s.24 of the aforesaid Act of 1971 and,therefore,we deem it just and proper to make it clear that the petitioner-appellant will be free to move an application fore grant of compensation under s.24 of the aforesaid Act of 1971 and if such an application is moved before the competent authority,it should be considered on merits and the pendency of these proceedings will not come in the way of the petitioner to claim compensation belatedly. The competent authority,before whom,such an application is filed will consider that application on merits without taking into consideration the delay caused in filing this application for compensation that has occasioned on account of the pendency of these proceedings.

With these observations, this special appeal stands disposed of accordingly."

After the decision of the division bench dated 13.1.1993, the petitioners submitted a claim petition under Section 24 of the Act of 1971 claiming that the petitioners is entitled for compensation for the land measuring 100.08 acres which was requisitioned under the Act of 1971 and for which according to the petitioners, no compensation has been given to the petitioners. This claim petition of the petitioners was contested by the Union of India and in reply, it has been stated by the Union of India that Union

of India has already paid the compensation of Rs.6,45,000/- to the State Government on 30.3.1985 and it was also pleaded that for the land measuring 100 bighas claimed by the petitioners, for that also, the compensation has already been paid. However, in reply, the Union of India challenged the title of the petitioners to the property in question. In such circumstances, the petitioners submitted applications for summoning of certain documents either from the Government department or from the possession of Union of India itself, copies of which are also placed on record by the petitioners.

The stand of the petitioners is that if the State and Union of India would have looked into their own record and if they would have examined the sale deed of the petitioners, they themselves could have decided that the petitioners are owners of the property. It is also contended that, from voluminous admissions made by the Union of India at various places and in various communications interse or before this Court by the State, it is clear that the petitioners' title to the land was never challenged by the Union of India or State rather according to the petitioners, the title of the petitioners is admitted in various documents by the State as well as Union of India.

The petitioners placed several documents before the learned District Collector cum Competent Authority under the Act of 1971 to substantiate their claim about the

compensation but the learned District Collector by detailed order dated 8.3.1989 rejected the petitioners' claim after holding that the petitioners failed to prove their title to the land in question for which the learned Collector relied upon various documents and observed that there is no entry of the petitioners' name in the revenue record. The petitioners tried to get their names mutated in the revenue record but that prayer of the petitioners was rejected and against that order of rejection of mutation, the petitioners did not choose to prefer any appeal.

The learned Collector also observed that the neighbourhood given in the sale deed of the petitioners is different than the location which has been projected by the petitioners. There are very many other facts which too were considered by the learned Collector for rejecting the claim of the petitioners. The petitioners thereafter preferred review petition before the learned Collector and that too was dismissed vide order dated 23.10.2000 (Annex.52).

In the backdrop of these facts, the petitioners have preferred this writ petition to challenge the orders dated 8.3.1999 and 23.10.2000.

Learned counsel for the petitioners referred almost all the documents during the course of the arguments which have been placed on record by the petitioners to show that the petitioners' title is proved from the documents and even from the admissions of Union of India and of the State

Government and further the petitioners' title was never challenged by anybody since 1976 till the division bench decided the special appeal filed by the petitioners. It is also submitted by learned counsel for the petitioners that the District Collector had no jurisdiction to decide the title of the property in question and he exceeded his jurisdiction in deciding the title. It is also submitted that the State and Union of India since did not join the issue about the title of the petitioners for the land in question, now after the decision of the Division Bench, they had no right to dispute the title of the petitioners. It is also submitted that the only question which was referred to the District Collector for decision was for determining the compensation and entitlement of the petitioners for compensation. For that purpose also, according to learned counsel for the petitioner, in case of agreement only, the compensation could have been paid to the petitioners and in case of dispute, the matter could have been referred to the Arbitrator only under the provisions of Section 8(1)(b) of the Requisition and Acquisition of Immoveable Property Act, 1952 (for short 'the Act of 1952') as the Act of 1971 was repealed by Section 26 of the Act of 1952.

According to learned counsel for the petitioners, firstly, the competent authority should have rejected the defence of the State and Union of India questioning the title of the petitioners in view of the documents submitted by the petitioners and if the District Collector was of the

opinion that the defence of Union of India and State cannot be rejected as having no foundation, then he should have referred the matter to the Arbitrator under Section 8(1)(b) of the Act of 1952.

Learned counsel for the petitioners further vehemently submitted that the order passed by the District Collector dated 8.3.1999 deserves to be set aside only on the ground that the District Collector failed to pass any order on the petitioners' application for summoning of the documents. Learned counsel for the petitioners also submitted that the District Collector orally directed the Union of India and State Government to produce the documents which were in their possession and for that purpose, the petitioners wrote a letter to the Union of India for submitting the documents before the decision of the petitioners' application but despite this request, neither the District Collector ordered summoning of the documents nor the respondents produced the relevant documents.

Learned counsel for the petitioners further vehemently submitted that this Court on the basis of the documents placed on the record can certainly pass appropriate order holding that the land in question is not agriculture land and is an abadi land in view of the decision of the Hon'ble Supreme Court delivered in the case of Adhunik Grah Nirman Sahakari Samiti Ltd. vs. State of Rajasthan and another reported in AIR 1989 SC 867. According to learned counsel for the petitioners, in that case, the controversy has been

set at rest about the nature of the land by the Supreme Court by holding that the land in question is abadi land.

According to learned counsel for the petitioners, this Court can held that since the petitioners are owners/khatedars of the land in question, therefore, they may be given compensation for the land in question which was requisitioned for Union of India.

Contesting the submissions of the learned counsel for the petitioners, learned counsel for the respondents submitted that firstly the petitioners failed to prove the title to the property and that finding has been recorded by the competent court, therefore, this Court cannot rather should not appreciate and reappreciate the evidence again to interfere in the findings of the fact recorded by the competent authority by exercise jurisdiction under Article 227 of the Constitution of India.

It is also submitted that a bare perusal of the impugned orders would show that the competent authority considered all the facts and relevant material and the finding recorded by the competent authority is based on evidence and if there may be two views, which according to the respondents is not there, then also, this Court cannot interfere in the findings of fact.

Apart from above, it is also submitted that the land in question was in fact of the State Government and the

possession of land was delivered to the Union of India by the State Government and the Union of India has already paid compensation to the State Government, therefore, no relief can be granted against Union of India.

In addition to above, learned counsel for the respondents, as per Section 23(2) of the Act of 1971, the lis under the Act of 1971 can be between the claimant to whom an order in writing has been addressed for requisitioning his property and here in this case, no notice was ever issued to the petitioner under Section 23 of the Act of 1971, therefore, he has no locus standi to claim any compensation nor he can get any relief under the Act of 1971.

According to learned counsel for the respondents, since the petitioners' name is not entered into the revenue record, therefore, only remedy available to the petitioners was that they should have sought declaration of their right, title or interest in the property from competent court and only upon which they could have put forward their claim for entitlement to even compensation.

I have considered the rival submissions and perused the record.

It will be worthwhile to mention here that the stand of Union of India at different stages was different and those stands are not reconcilable because of the reason that the

Union of India at one stage says that the land in question was belonging to the State Government and they took the land from the Government and paid the compensation to the Government. At the same time, the Union of India has come with a case that the land in question was sold by Ex-Ruler in the year 1962 before sale deed was registered in favour of the petitioner and the land which the petitioner is claiming was part of the earlier sale deed and, therefore, the petitioners have no right, title or interest in the property. Another stand of the Union of India is that the land is not at all covered under the requisition proceedings despite the fact that in earlier round of litigation, it was submitted that possession of the petitioners' land has been taken over by the Union of India. Be it as it may be, this Court is not intending to decide the question of title of the property because looking to the evidence placed on record, it appears that there is serious contest about the title of the property and the Union of India is also contesting the title of the property and the State Government is also contesting.

The root question in this case is whether the learned District Collector had any jurisdiction to decide the title of the property in question after the Division Bench decision of this Court dated 13.1.1993 in DB Special Appeal No.246/1981.

It will be worthwhile to recapitulate the fact that the Division Bench of this Court in its order dated 13.1.1993

observed as under :-

> Be that as it may, in the meanwhile, His Excellency the President of India was pleased to acquire this land for defence purposes and,therefore, this land was acquired under s.23(i) of the Defence and Internal Security of India Act,1971.

Both the learned counsels submit that the work "acquisition" has been used inadvertently in the order and in fact, the land was not acquired but it was requisitioned. After noticing the aforesaid fact, the Division Bench ordered that, "if he (petitioner) wants to claim any compensation for the aforesaid acquisition of land,he should move an application under s.24 of the aforesaid Act of 1971." and thereafter, the Division Bench ordered that, "we deem it just and proper to make it clear that the petitioner-appellant will be free to move an application fore grant of compensation under s.24 of the aforesaid Act of 1971 and if such an application is moved before the competent authority,it should be considered on merits and the pendency of these proceedings will not come in the way of the petitioner to claim compensation belatedly."

It is clear from the aforesaid direction of this Court that the competent authority was given direction only to decide the application of the petitioners on merits certainly in accordance with law.

How, the District Collector decided the application of the petitioners is a relevant fact because of the reason that as stated above, the land in question was requisitioned under Section 23 of the Act of 1971. Section 24 provides for procedure for payment of compensation. Section 24 says that whenever, in pursuance of Section 23, the Central Government or the State Government, as the case may be, requisitioned any immovable property, compensation shall be paid to the persons interested, the amount of which shall be determined by taking into account Sub-clauses (i), (ii) and (iii) of Section 24.

First Proviso appended to Section 24 provides for redressal of grievance in case person in whose favour, there is an order of compensation and he feels aggrieved against that order, then he can move within the time prescribed, to the Central Government or the State Government for referring the matter to an Arbitrator.

Proviso II of Section 24 reads as under :-

> "Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination and shall be determined in accordance with the decision of such arbitrator."

Therefore, as per the second proviso to Section 24, the Arbitrator has been given power to decide “dispute as to the title to receive compensation”.

The matter has not been decided as provided under Section 24 of the Act of 1971 and the Act of 1971 has been repealed by Section 26 of the Act of 1952 which came into force from 26.9.1977.

So far as the application of the provisions of the Act of 1952 is concerned, there is no dispute between the parties after the repeal of the Act of 1971 by the Act of 1952 which came into force with effect from 26.9.1977.

The provisions for determination of the compensation are provided under Section 8 of the Act of 1952. Section 8 (1) provided only to the extent that where the amount of compensation can be fixed by the agreement than that compensation shall be paid in accordance with the agreement. However, sub-section (2) is a provision which is applicable when there is no agreement for compensation amount. Sub-clauses (a) and (b) of Section 8(1) read with sub-clause (f) of Section 8(1) are relevant which read as under :-

> “(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement ;

(b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as, a Judge of a High Court ;

(f) Where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons ;"

A bare perusal of not only Section 8(1) but all other provisions as well as the Rules framed thereunder makes it clear that in case of agreement, the compensation can be fixed by agreement and can be paid in accordance with such agreement but when there is a dispute about the entitlement to the compensation, the matter can be decided only through arbitrator and that arbitrator is required to be appointed by the Central Government as per Section 8(1)(b) of the Act of 1952. Admittedly, no arbitrator has been appointed under Section 8(1)(b) and, therefore, the matter has not been decided by the arbitrator despite the fact that there is no agreement for the amount of compensation or for entitlement to the compensation between the parties.

The learned Collector had no jurisdiction to assume the jurisdiction of the Arbitrator for the purpose of deciding

the title of the property, for the purpose of deciding the entitlement or non-entitlement of any of the property for compensation.

Despite best efforts, learned counsel for Union of India could not point out any provision of law by which the District Collector has been given power to decide the issue of entitlement for the compensation in case of dispute.

So far as the contention of learned counsel for the petitioners that no order in writing or any notice requisitioning the property has been served upon or given to the petitioners under the Act of 1971, therefore, he has no locus standi to move any petition under the Act of 1971, it is liable to be rejected as this objection is not supported by any law and this was not the objection taken before the Division Bench of this Court when the Division Bench of this Court permitted the petitioner to move application before the Collector under Section 24 of the Act of 1952.

It is also submitted that the possession was also not taken from the petitioners by either State Government or Union of India and since the Union of India took possession of the property from the State and paid the compensation to the State, therefore also, without establishing the title to the property by filing suit for declaration, the petitioners could not have got the relief of payment of compensation in any manner. The contention of learned

counsel for the petitioners proceeds on assumption that only person who can initiate any proceedings or submit his claim for compensation under Section 24 of the Act of 1971 is a person against whom an order has been issued by the Central Government requisitioning his property. Meaning thereby, the question of title cannot be determined by any authority under the Act of 1971 or Act of 1952 and only question about entitlement of compensation between those persons to whom an order has been served by the State Government and for the purpose of deciding the extent of entitlement to the party to whom an order has been served by Union of India for requisitioning the property.

The argument of learned counsel for the Union of India proceeds just contrary to what has been provided under Proviso 2 of Section 24 of the Act of 1971 which clearly provides that where there is any dispute as to the title to receive compensation, the matter is required to be decided by the Arbitrator. Title to receive compensation is an issue which can be joined by a person who is setting up title to compensation and title to compensation can be set up by the person who is owner of the property, khatedar tenant of the property or who is in possession of the property as mentioned in Section 23(2).

It is different thing what shall be the effect of the decision of the Arbitrator about the title of one person or the proceedings under the provisions of the Act of 1971 and whether that decision of the arbitrator can be challenged

by the aggrieved party or not is also not material for the purpose of deciding this writ petition. If the submission of learned counsel for the respondents is accepted, then in case, notice is issued to the person and he also is not in position to set up his title to the property or cannot claim possession of the property, then the authority will not pay the compensation to any person. Apart from above, in view of the specific provision as provided in Proviso 2 to Section 24, the Arbitrator is required to decide the title of a person for the properties in dispute for payment of compensation because that only can be interpretation of the words “.... there is any dispute as to the title to receive the compensation.....”

In this case, since the matter has not been decided till the repeal of the Act of 1971, then the procedure as provided under Section 8 of the Act of 1952 should have been followed and there is no dispute for this between the parties before this Court. The only dispute is that whether the District Collector, as a competent authority. This Court is of the opinion that the District Collector had no jurisdiction to decide the matter in as much as, there was no agreement between the parties and he has not been appointed as Arbitrator by the Central Government.

It will be worthwhile to mention here that in sub-clause (f) of Section 8(1), the word “title” is missing which were in the second proviso to Section 24 of the Act of 1971 but at the same time, sub-clause (f) of Section 8

(1) very clearly provides that “Where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute” and it further provides that, “if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons.” Therefore, for the purpose of deciding the entitlement of compensation, the arbitrator will have to record the finding about the title of the property. When jurisdiction has been given to the Arbitrator to decide the entitlement to the compensation expressly by Section 8(1)(f) of the Act of 1952 and when such jurisdiction has not at all been given to the learned District Collector or the competent authority under any provisions of law either under the Act of 1971 or under the Act of 1952, any finding recorded by the learned District Collector on all the contentious issues are wholly without jurisdiction.

In view of the above, the writ petition of the petitioners deserves to be allowed and it is held that the order impugned passed by the learned District Collector dated 8.3.1999 and all findings recorded in the order are without jurisdiction.

It is also made clear that according to the petitioners, the learned District Magistrate committed factual error in holding that the petitioners applied for mutation of the land in question but in fact, the petitioners did not apply is concerned, that is also an issue which can be decided only by the arbitrator appointed.

Since it has been found that the learned District Collector had no jurisdiction to decide any of the issues, therefore, all issues shall remain open and both the parties shall have full opportunity to contest the issue. It is also made clear that the learned Arbitrator shall not be influenced by the order of the District Collector as he is to take an independent decision under the provisions of the Act of 1952.

Accordingly, this writ petition is allowed, the orders of the District Collector dated 8.3.1999 and 23.10.2000 are quashed and set aside. The Union of India is directed to appoint an arbitrator within a period of two months from the date of receipt of the certified copy of this order and the Union of India may direct the arbitrator to decide the matter within the period within which the arbitrator is required to decide the proceedings under the Act of 1952.

(PRAKASH TATIA), J.

S.Phophaliya